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DISTRICT I

October 4, 2022

To:

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Circuit Court Judge
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Clerk of Circuit Court
Milwaukee County
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You are hereby notified that the Court has entered the following opinion and order:

2021AP654

State of Wisconsin v. Derek Monroe Williams
(L.C. # 1995CF954194A)

Before Donald, P.J., Dugan and White, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Derek Monroe Williams appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2019-20).¹ He argues that: (1) he is entitled to a new trial based on newly discovered evidence; and (2) the circuit court should have held a hearing on his motion.² Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Upon review, we affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² Williams raised additional issues in the circuit court that he did not pursue on appeal.

Derek Williams and two co-defendants, Lawrence Williams and James Evans, were responsible for a string of armed robberies throughout the greater Milwaukee area in 1995.³ After a jury trial, Derek Williams was convicted of twelve counts of armed robbery. The circuit court sentenced him to an indeterminate term of fifteen years on each count, to be served consecutively.

Derek Williams argues that he is entitled to a new trial based on newly discovered evidence—Lawrence Williams’s sentencing transcript. He contends that he was not aware of the transcript until his fiancé obtained a copy of it from the clerk’s office in 2020. He argues that the transcript shows that Lawrence Williams lied about the agreement he had with the State when testifying at Derek Williams’s trial.

“The decision to grant or deny a motion for a new trial based on newly-discovered evidence is committed to the circuit court’s discretion.” *State v. Plude*, 2008 WI 58, ¶31, 310 Wis. 2d 28, 750 N.W.2d 42. To obtain a new trial based on newly discovered evidence, a defendant must establish that: “(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.” *Id.*, ¶32 (citation omitted). If the defendant establishes all four of these criteria, then the court must determine “whether a reasonable probability exists that had the jury heard the newly-discovered evidence, it would have had a reasonable doubt as to the defendant’s guilt.” *Id.* This determination is a question of law. *Id.*, ¶33.

³ For clarity’s sake, we refer to both Derek Williams and Lawrence Williams by their full names because they share the same last name. The two men are not related.

We conclude that Derek Williams has not met his burden of showing that he “was not negligent in seeking the evidence.” See *id.*, ¶32. Derek Williams was aware that Lawrence Williams pleaded guilty and was sentenced more than a year before his own trial. The transcript of Lawrence Williams’s sentencing hearing was readily available to Derek Williams for over two decades, had he chosen to seek it out. In fact, there was a copy of the transcript in Derek Williams’s circuit court file. As succinctly stated by the circuit court in denying Derek Williams’s postconviction motion: “The defendant clearly cannot meet his burden of showing that he was not negligent in seeking this evidence; newly discovered evidence cannot be found in the record of the defendant’s own case.”

We also conclude that Derek Williams has not met his burden of showing that information in Lawrence Williams’s sentencing transcript is not merely cumulative to evidence presented at trial. *Id.* At Derek Williams’s trial, Lawrence Williams informed the jury that he pled guilty to one count of armed robbery and received a ten-year sentence in exchange for agreeing to provide truthful testimony. In contrast, the sentencing transcript shows that the prosecutor informed the circuit court that he charged Lawrence Williams with only one count of armed robbery in exchange for Lawrence Williams’s agreement to make a truthful statement. Because the information in the sentencing transcript is essentially the same as the information provided to the jurors at Derek Williams’s trial, the sentencing transcript is cumulative. *Id.* (stating that a defendant must establish that newly discovered evidence is not cumulative to information presented at trial).

In conclusion, Derek Williams has not alleged facts that, if true, show that he meets the *Plude* criteria for obtaining a new trial based on newly discovered evidence. As such, we do not address his claim of newly-discovered evidence further and we conclude that the circuit court

properly denied his motion without a hearing. *See State v. Allen*, 2004 WI 106, ¶14, 274 Wis. 2d 568, 682 N.W.2d 433 (“A hearing on a postconviction motion is required only when the movant states sufficient material facts that, if true, would entitle the defendant to relief.”).

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals